



December 8, 2020

VIA E-FILING

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor -- Filing Room
Harrisburg, PA 17120

Re: Application of Pennsylvania-American Water Company-Wastewater Division under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329, for the Acquisition of Royersford Borough's Wastewater System Assets; Docket No. A-2020-3019634, et al.

Petition for Protective Order of Pennsylvania-American Water Company

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("Commission") is the Petition for Protective Order of Pennsylvania-American Water Company ("PAWC") in the above-referenced matter. The enclosed Petition for Protective Order contains no facts that are not already in the record. Consequently, no verification is required.

A copy is being served in accordance with the attached Certificate of Service.

Thank you for your attention to this filing. Please contact me if you have any question or concern.

Sincerely,

COZEN O'CONNOR

By: David P. Zambito
Counsel for *Pennsylvania-American Water Company*

DPZ

Enclosure

cc: Administrative Law Judge Marta Guhl
Per Certificate of Service
Elizabeth Rose Triscari, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water :
Company-Wastewater Division under Section 1329 of :
the Pennsylvania Public Utility Code, 66 Pa. C.S. : Docket No. A-2020-3019634
§ 1329, for the Acquisition of Royersford Borough's :
Wastewater System Assets :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Petition for Protective Order of Pennsylvania-American Water Company**, upon the parties, listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**DUE TO THE COVID-19 EMERGENCY, THIS DOCUMENT
IS BEING SERVED BY E-MAIL ONLY**

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Date: December 8, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ADMINISTRATIVE LAW JUDGE
MARTA GUHL**

Application of Pennsylvania-American Water
Company-Wastewater Division under Section 1329 :
of the Pennsylvania Public Utility Code, 66 Pa. C.S. : Docket No. A-2020-3019634
§ 1329, for the Acquisition of Royersford Borough’s :
Wastewater System Assets :

PETITION FOR PROTECTIVE ORDER

Pennsylvania-American Water Company (“PAWC”) files this petition pursuant to 52 Pa. Code § 5.365 for the protection from public disclosure of certain confidential and proprietary information that PAWC has included in its application in the above matter (the “Application”) and which PAWC anticipates submitting to and exchanging with the Pennsylvania Public Utility Commission (“Commission”) and the parties during the course of these proceedings. In support, PAWC states as follows.

I. Procedural History

1. PAWC and Royersford Borough (“Royersford”) entered into an Asset Purchase Agreement (“APA”) dated as of December 10, 2019, by which PAWC will purchase the wastewater system (the “System”) presently owned by Royersford (the “Transaction”).

2. On April 1, 2020, Royersford filed a Petition with the Commission at Docket No. P-2020-3019398 seeking a declaratory order that Royersford’s provision of wastewater treatment service to 16 residents of Upper Providence Township (“Upper Providence”) does not constitute

public utility service under Section 102 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 102 (“Definitions”), and therefore it is not subject to the Commission’s jurisdiction. The Commission granted the petition on July 23, 2020.

3. On July 14, 2020, PAWC filed the Application asking the Commission to approve the Transaction pursuant to 66 Pa. C.S. §§ 1102 and 1329 (the “Section 1329 Application Proceeding”).

4. On July 21, 2020, Erika L. McLain entered her appearance on behalf of the Bureau of Investigation and Enforcement (“I&E”). John Coogan entered his appearance on behalf of I&E on August 12, 2020.

5. On July 29, 2020, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement, together with the Notices of Appearance of Christine Maloni Hoover, Erin L. Gannon, Santo G. Spataro, and Harrison W. Breitman.

6. On July 28, 2020, the Office of Small Business Advocate (“OSBA”) filed the Notice of Appearance of Sharon E. Webb, Esq.

7. On August 6, 2020, staff from the Commission’s Bureau of Technical Utility Services (“TUS”) notified PAWC that they had performed a completeness review of the Application and determined that certain information was missing. TUS staff requested that the information be provided within ten business days (*i.e.*, by August 20, 2020). On August 20, 2020, PAWC filed the information requested by TUS following its completeness review.

8. On September 11, 2020, the Commission notified PAWC that the Application had been conditionally accepted for filing. According to the Secretarial Letter, the Commission would not finally accept the Section 1329 Application until PAWC complied with certain service and notice requirements. On October 9, 2020, PAWC filed proof of publication in local newspapers.

On October 13, 2020, PAWC filed proof of service of the Application on required municipal entities, public utilities, and other offices. On October 30, 2020, 2020, PAWC notified the Commission that it had completed providing individualized notice of the Application to customers of PAWC and Royersford, and PAWC filed a verification stating that it had complied with all requirements of the Secretarial Letter of September 11, 2020.

9. Also on October 30, 2020, PAWC filed the First Amendment to the APA, together with supporting documents.

10. By Secretarial Letter dated November 9, 2020, the Commission notified PAWC that it had finally accepted the Application for filing. The Commission further notified PAWC that notice of the Application would be published in the *Pennsylvania Bulletin* with a protest deadline of December 7, 2020. The notice was published on Saturday, November 21, 2020. 50 *Pa. B.* 6761.

11. On November 3, 2020, the Commission notified the parties that a prehearing conference would be held on December 10, 2020. The Honorable Marta Guhl (the “ALJ”) issued her Prehearing Conference Order on November 5, 2020.

12. On November 12, 2020, Royersford filed a Petition to Intervene.

II. Request for Protective Order

13. The Application and its appendices, along with additional materials that PAWC anticipates exchanging in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination, or as a courtesy to parties, contain information that PAWC considers confidential and proprietary.

14. Section 5.365(a) of the Commission's regulations provide that a petition for protective order will be granted "when a party demonstrates that the potential harm to the party of providing the [confidential or proprietary] information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process." The factors that the Commission evaluates include: "(1) The extent to which the disclosure would cause unfair economic or competitive damage. (2) The extent to which the information is known by others and used in similar activities. (3) The worth or value of the information to the party and to the party's competitors. (4) The degree of difficulty and cost of developing the information. (5) Other statutes or regulations dealing specifically with disclosure of the information." *See* 52 Pa. C.S. § 5.365(a)(1)-(5).

15. Confidential and proprietary information contained in the Application and in materials PAWC anticipates will be exchanged during these proceedings would cause PAWC unfair economic or competitive disadvantage because the information that PAWC would seek to protect is not generally known, is valuable to PAWC, derives value in part due to PAWC's efforts to maintain the confidentiality of the information, and could be valuable to competitors (and, in turn, harmful to PAWC) if disclosed publicly.

16. The issuance of a protective order adequate to cover all parties and establish procedures in accordance with 52 Pa. Code § 5.365 for the provision of information believed to be confidential or proprietary would serve administrative economy and efficiency by obviating the need for parties to address confidential/proprietary concerns on a piecemeal basis every time confidential/proprietary information is requested.

17. The proposed protective order included with this Petition is in the usual accepted form, consistent with due process rights and evidentiary burdens. It allows parties to retain the

right to question or challenge the confidential or proprietary nature of information; to challenge the admissibility of confidential or proprietary information; to refuse or object to the production of confidential or proprietary information on any proper ground; to seek disclosure of confidential or proprietary information beyond that allowed in the Protective Order; and to seek additional measures of protection beyond those provided in the Protective Order. The Protective Order also provides that the party claiming that the information is confidential or proprietary retains the burden of demonstrating that such designation is necessary and appropriate.

18. Counsel for PAWC has contacted Counsel for the I&E, OCA, OSBA and Royersford, and they advise that they do not object to the entry of the proposed protective order.

WHEREFORE Pennsylvania-American Water Company requests that the Pennsylvania Public Utility Commission enter the Protective Order included with this Petition.

Respectfully submitted,



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Date: December 8, 2020

Attorneys for *Pennsylvania-American Water Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-American Water
Company-Wastewater Division under Section 1329 :
of the Pennsylvania Public Utility Code, 66 Pa. C.S. : Docket No. A-2020-3019634
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PROTECTIVE ORDER

THEREFORE, upon consideration of the petition for protective order filed by the applicant in the above matter and any response thereto,

IT IS ORDERED:

1. That the Petition for a Protective Order is granted with respect to all materials and information identified in Paragraph 2 below, which are filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. That materials subject to this Protective Order are all correspondence, documents, data, information, excerpts, summaries, studies, methodologies and other materials (including materials derived therefrom) which a party or an affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, formal and informal discovery procedures, testimony or oral examination, or provided as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated “PROPRIETARY INFORMATION” or “CONFIDENTIAL AND PROPRIETARY” or

“PRIVILEGED AND CONFIDENTIAL” (hereinafter collectively referred to as “Proprietary Information”).

3. That, in addition, the parties may designate extremely sensitive Proprietary Information as “HIGHLY CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL MATTER” (hereinafter referred to as “Highly Confidential Information”) and thus secure the additional protections set forth in this Protective Order pertaining to such material.

4. That Proprietary Information and Highly Confidential Information produced in this proceeding shall be made available, solely for use in this proceeding, to the Commission and its Staff, the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Royersford Borough (“Royersford”), and additional parties, if any. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

5. That Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party’s counsel, upon execution of the attached Appendix A, may afford access to Proprietary Information made available by another party (“the producing party”)

to the party's expert(s) and staff. Any information provided under this provision may be used only for and to the extent that it is necessary for participation in this proceeding. Any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person to gain commercial advantage.

b. Highly Confidential Information. Where information is asserted to be Highly Confidential Information, the producing party shall permit counsel for I&E, OCA and OSBA (individually "public advocate" and collectively the "public advocates") and other counsel to take custody of a copy of such Highly Confidential Information, provided that it shall not be copied, except for counsel, and the public advocates' in-house staff, independent consultants, or non-lawyer representatives, in accordance with the protocols set forth below and shall be returned as provided for in this Protective Order. Such Highly Confidential Information may be provided by a public advocate to its eligible in-house staff without the need for execution of Appendix A. Additionally, such Highly Confidential Information may be provided by a public advocate or other counsel to its eligible independent consultants (as defined in 52 Pa. Code § 5.365(d)) or other non-lawyer representatives who are assisting counsel with these proceedings, provided that such consultants and non-lawyer representatives execute and return the attached Appendix A to the producing party pursuant to Paragraph 6 of this Protective Order.

c. No other persons may have access to the Proprietary or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information, shall use or disclose such

information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

6. Prior to making Proprietary or Highly Confidential Information available to any independent consultant or non-lawyer representatives, counsel shall, except as specifically exempted under Paragraph 5(b) of this Protective Order, deliver a copy of this Protective Order to such person and shall receive a written acknowledgment from that person in the form attached to this Protective Order and designated as Appendix A. Counsel shall promptly deliver to the producing party a copy of the executed Appendix A. Counsel for I&E may make Proprietary or Highly Confidential Information available to the I&E Chief Prosecutor and Deputy Chief Prosecutor, as well as administrative support staff, without execution of Appendix A by such persons.

7. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or type-written designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

8. Any public reference to Proprietary or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information shall

remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

9. Part of any record of this proceeding containing Proprietary or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in paragraph 8 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to Order of the Administrative Law Judge, the Commission or appellate court. Unresolved challenges arising under paragraph 10 shall be decided on petition by the presiding officer or the Commission as provided by 52 Pa. Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, *etc.*, to the extent that such guidance is available.

10. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential Information; to question or challenge the admissibility of Proprietary or Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as

Proprietary or Highly Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

11. This Protective Order shall continue to be binding throughout and after the conclusion of this proceeding.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential Information, shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated: _____

Administrative Law Judge Marta Guhl

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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ACKNOWLEDGMENT

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the receiving party).

The undersigned has read the Protective Order dated _____, 2020, and understands that it deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and to comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of paragraph 5 of the Protective Order prior to submitting this Acknowledgement.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE